

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

**UNITED STATES OF AMERICA, FOR THE USE)
AND BENEFIT OF MANSFIELD INDUSTRIAL,)
INC.,)**

Plaintiff,

v.

WESTERN SURETY COMPANY,)

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

This is an action pursuant to the provisions of 40 U.S.C. § 3133, known as the Miller Act, whereby a subcontractor to a general contractor on a construction project for an agency of the United States seeks payment of an amount of \$54,159.70 for work performed for which the defendant was the surety.

PARTIES

1. The plaintiff is the United States of America for the use and benefit of Mansfield Industrial, Inc. ("Mansfield"). Mansfield is a Delaware corporation with a principal place of business located at 1325 West Detroit Blvd., Pensacola, Florida 32534. Mansfield is engaged in construction services throughout the United States.

2. The defendant, Western Surety Company (the "Surety"), is a South Dakota corporation authorized to do business and doing business within the State of Florida. Western Surety Company may be served with service of process upon its registered agent, Chief Financial Officer, P.O. Box 6200 (32314-6200), 200 E. Gaines Street, Tallahassee, Florida 32399.

JURISDICTION AND VENUE

3. This action arises under the laws of the United States, 40 U.S.C. § 3133, and this Court has subject matter jurisdiction over this action under that statute.

4. Venue is proper before this Court pursuant to 40 U.S.C. § 3133(b)(3).

FACTUAL BACKGROUND

5. In 2007, D.K. Haney Roofing, Inc. (“D.K. Haney”) entered into a Contract with the United States acting by and through the United States Navy for a project known as “Roofing Repairs to Hanger 2941” at the Whiting Field Hangar in Milton, Florida (the “Project”).

6. As required by the Miller Act, 40 U.S.C. § 3131(b), D.K. Haney furnished a payment bond (the “Bond”) to the United States. The Bond designates D.K. Haney as the Principal and Western Surety Company as the Surety. (A true and correct copy of the Bond is attached hereto as Exhibit “A”).

7. Mansfield entered into a subcontract (the “Subcontract”) with D.K. Haney dated June 3, 2008, to perform certain roofing work on the Project at a price of \$160,000.00. Per a deductive change order, the amount of the contract was amended to \$102,685.00. (A true and correct copy of the Subcontract is attached hereto as Exhibit “B”).

8. Mansfield subsequently furnished all labor required by the Subcontract.

9. Despite Mansfield completing all work on the Project, Mansfield is still owed the balance of \$54,159.70.

10. Despite due demand, and numerous promises to pay, D.K. Haney has refused to pay the remaining balances owed to Mansfield in accordance with the terms of the Subcontract, 31 U.S.C. § 3905 and FLA. STAT. ANN. §§ 255.073, 715.12.

11. Pursuant to the Bond, the Surety is obligated to pay Mansfield for all amounts it is due from D.K. Haney on the Project.

12. Mansfield has complied with all conditions precedent with respect to the maintenance of this claim against the Surety.

COUNT I

13. Mansfield hereby repeats paragraphs 1–12 as if fully set forth herein.

14. Mansfield completed all work under the Subcontract.

15. The fair value of all work performed by Mansfield is \$102,685.00.

16. D.K. Haney breached the Subcontract by failing to pay Mansfield the amount of \$54,159.70 plus interest on payments not made on time, which constitutes the fair value of the work performed by Mansfield, which D.K. Haney has refused to pay.

17. Per the express terms of the Bond, the Surety is obligated to pay Mansfield the amount of \$54,159.70, plus interest and attorneys' fees on payments not made in accordance with the provisions of 31 U.S.C. § 3905 and FLA. STAT. ANN. §§ 255.073, 715.12.

18. Mansfield has complied with all conditions precedent with respect to the maintenance of this claim against the Surety.

WHEREFORE, Mansfield demands judgment against the defendant, Western Surety Company, for \$54,159.70 plus interest, attorneys' fees and costs.

Respectfully submitted, this 21st day of October, 2009.

MANSFIELD INDUSTRIAL, INC.

By its Attorney,

/s/ H. William Wasden

H. William Wasden (FL Bar #0880604)

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